

ESTTA Tracking number: **ESTTA312943**

Filing date: **10/22/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Tibi, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	666 Broadway, 10th Floor New York, NY 10012 UNITED STATES		

Attorney information	Gordon E. R. Troy Gordon E. R. Troy, PC PO Box 368 Charlotte, VT 05445 UNITED STATES usptomail@webtm.com Phone:802 425-9060
----------------------	--

### Applicant Information

Application No	77738941	Publication date	09/22/2009
Opposition Filing Date	10/22/2009	Opposition Period Ends	10/22/2009
Applicant	Fairall, Paul 328 Lakeside Ct Cheney, KS 67025 UNITED STATES		

### Goods/Services Affected by Opposition

Class 014. All goods and services in the class are opposed, namely: Jewelry
Class 025. All goods and services in the class are opposed, namely: Tops
Class 028. All goods and services in the class are opposed, namely: Dolls

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------


### Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	2399688	Application Date	07/19/1999
Registration Date	10/31/2000	Foreign Priority Date	NONE
Word Mark	TIBI		

Design Mark	<b>TIBI</b>
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1997/08/01 First Use In Commerce: 1997/08/01 Clothing for women, namely sweaters, tops, shirts, blouses, skirts, dresses, pants and shorts, bathing suits, shoes, underwear, and hats

U.S. Registration No.	2446419	Application Date	04/17/2000
Registration Date	04/24/2001	Foreign Priority Date	NONE
Word Mark	TIBI		
Design Mark	<b>TIBI</b>		
Description of Mark	NONE		
Goods/Services	<p>Class 014. First use: First Use: 1999/11/01 First Use In Commerce: 1999/11/01 Jewelry, namely, necklaces, rings, chains, earrings, charms, cameos, pendants, watches, bracelets, ankle bracelets and cufflinks</p> <p>Class 018. First use: First Use: 1999/11/01 First Use In Commerce: 1999/11/01 Bags, namely, backpacks, hand bags, duffel bags, traveling bags, and waist pouches; ladies hand bags and evening bags; wallets; key cases; leather key holders; all purpose sports bags; tote bags</p> <p>Class 025. First use: First Use: 1997/08/01 First Use In Commerce: 1997/08/01 Clothing for men, women and children, namely sweaters, tops, shirts, t-shirts, jackets, jeans, vests, scarves, blouses, skirts, dresses, pants and shorts, bathing suits, shoes, underwear, hats, bathrobes, loungewear, sleepwear, brassieres, bustiers, camisoles, chemises, corselettes, corsets, foundation garments, dressing gowns, dusters, garter belts, girdles, housecoats, lingerie, negligees, night gowns, night shirts, pajamas, peignoirs, robes, underclothes, undergarments, underpants, undershirts, underwear, sweat shirts, sweat pants, socks, head bands</p>		

U.S. Registration No.	3355644	Application Date	04/02/2007
Registration Date	12/18/2007	Foreign Priority	NONE

		Date	
Word Mark	TIBI		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 035. First use: First Use: 2006/09/09 First Use In Commerce: 2006/09/09 Customer relationship management; Franchise services, namely, offering technical and business management assistance in the establishment and operation of retail stores; Mail order services featuring clothing, clothing accessories, hats, headwear, head bands, house wares, jewelry, perfumes, eye ware, bags, cosmetics, shoes, area rugs, home accessories, linens, pillows, blankets, sheets, bowls, plates, cups; Management and business consulting services in the field of retail, on-line retail, and mail order; On-line retail store services featuring clothing, clothing accessories, hats, headwear, head bands, house wares, jewelry, perfumes, eye ware, bags, cosmetics, shoes, area rugs, home accessories, linens, pillows, blankets, sheets, bowls, plates, cups; Providing consumer information in the field of clothing, clothing accessories, hats, headwear, head bands, house wares, jewelry, perfumes, eye ware, bags, cosmetics, shoes, area rugs, home accessories, linens, pillows, blankets, sheets, bowls, plates, cups; Retail department stores; Retail stores featuring clothing, clothing accessories, hats, headwear, head bands, house wares, jewelry, perfumes, eye ware, bags, cosmetics, shoes, area rugs, home accessories, linens, pillows, blankets, sheets, bowls, plates, cups</p>		

U.S. Registration No.	3536714	Application Date	04/15/2008
Registration Date	11/25/2008	Foreign Priority Date	NONE
Word Mark	TIBI NEW YORK		
Design Mark			
Description of Mark	The mark consists of the word "TIBI" in lower case with the word "New York" immediately below in upper case.		
Goods/Services	Class 014. First use: First Use: 2006/01/01 First Use In Commerce: 2006/01/01		

	<p>Ankle bracelets; Bracelets; Brooches; Charms; Chokers; Cufflinks; Earrings; Jewelry; Jewelry chains; Neck chains; Necklaces; Pendants; Rings; Watches; Watches and jewelry</p> <p>Class 018. First use: First Use: 2006/01/01 First Use In Commerce: 2006/01/01 All purpose sport bags; Backpacks; Backpacks, book bags, sports bags, bum bags, wallets and handbags; Duffel bags; Evening handbags; Handbags; Handbags, purses and wallets; Key cases; Leather key cases; Purses; Purses and wallets; Tote bags; Traveling bags; Waist bags; Waist packs; Wallets</p> <p>Class 025. First use: First Use: 2006/01/01 First Use In Commerce: 2006/01/01 Bathing suits; Bathrobes; Beach coverups; Beachwear; Blouses; Brassieres; Bustiers; Camisoles; Chemises; Corselets; Corsets; Dresses; Dressing gowns; Dusters; Footwear; Foundation garments; Garter belts; Girdles; Hats; Headbands; Housecoats; Jackets; Jeans; Lingerie; Loungewear; Negligees; Night gowns; Night shirts; Pajamas; Pants; Peignoirs; Robes; Scarves; Shirts; Shoes; Shorts; Skirts; Sleepwear; Socks; Suits; Sweat pants; Sweat shirts; Sweat suits; Sweaters; Swim wear; Swimsuits; Swimwear; T-shirts; Tops; Underclothes; Undergarments; Underpants; Undershirts; Underwear; Vests; Coats</p> <p>Class 026. First use: First Use: 2006/01/01 First Use In Commerce: 2006/01/01 Barrettes; Bobby pins; Hair bands; Hair bows; Hair clips; Hair ornaments; Hair pins; Hair ribbons; Hair scrunchies; Ponytail holders</p> <p>Class 035. First use: First Use: 2006/09/09 First Use In Commerce: 2006/09/09 Customer relationship management; Franchise services, namely, offering business management assistance in the establishment and operation of retail clothing and gift stores; Mail order services featuring clothing, clothing accessories, hats, headwear, head bands, housewares, jewelry, perfumes, eyeware, bags, cosmetics, shoes, area rugs, home accessories, linens, pillows, blankets, sheets, bowls, plates, cups; Management and business consulting services in the field of retail, on-line retail, and mail order business practices; On-line retail store services featuring clothing, clothing accessories, hats, headwear, head bands, house wares, jewelry, perfumes, eyeware, bags, cosmetics, shoes, area rugs, home accessories, linens, pillows, blankets, sheets, bowls, plates, cups; Providing consumer information in the field of clothing, clothing accessories, hats, headwear, head bands, housewares, jewelry, perfumes, eyeware, bags, cosmetics, shoes, area rugs, home accessories, linens, pillows, blankets, sheets, bowls, plates, cups; Retail department stores; Retail stores featuring clothing, clothing accessories, hats, headwear, head bands, house- wares, jewelry, perfumes, eyeware, bags, cosmetics, shoes, area rugs, home accessories, linens, pillows, blankets, sheets, bowls, plates, cups</p>
--	---

Attachments	<p>75754193#TMSN.gif ( 1 page )( bytes )  76027877#TMSN.gif ( 1 page )( bytes )  77146231#TMSN.jpeg ( 1 page )( bytes )  77448453#TMSN.jpeg ( 1 page )( bytes )  Notice of Opposition Filing Copy.pdf ( 4 pages )(51463 bytes )</p>
-------------	---

## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gordon E. R. Troy/
-----------	---------------------

Name	Gordon E. R. Troy
Date	10/22/2009

Our Ref: 1284-033.009

	)	
Tibi, LLC,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.
	)	
Paul Fairall,	)	
	)	
Applicant.	)	
	)	

Tibi, LLC, a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 666 Broadway, 10<sup>th</sup> Floor, New York, NY 10012 (“Opposer”), believes that it will be damaged by registration of the mark shown in application Serial No. 77738941, and, pursuant to 37 C.F.R. § 2.101(b) and 15 U.S.C. § 1052(d), hereby opposes same.

1. Opposer is the owner of U.S. trademark Registration Nos. 2399688, 2446419 and 3355644 for TIBI, covering goods and services in classes 14, 18, 25, and 35 generally covering among other things, clothing for men, women and children, jewelry, bags, and retail store services via mail order, on-line and department stores.

Gordon E. R. Troy, PC  
PO Box 368  
Charlotte, VT 05445

18, 25, 26 and 35 generally covering among other things, jewelry, bags, clothing, hair accessories, and retail store services via mail order, on-line and department stores.

3. Opposer is a well-known company that creates, designs, manufactures and distributes apparel and accessories sold throughout the world and its products are offered for sale through its own retail locations, on the Internet, and in retail stores throughout the United States and in many foreign countries.

4. Opposer is well known having achieved great notoriety for its new and innovative products in the fashion industry.

5. Opposer's products are aimed primarily for women.

6. Applicant filed an application to register the mark G.I.B.Y as shown in U.S. application Serial No. 77738941 on May 17, 2009, for classes 14, 25 and 28, covering "Jewelry; Tops; and Dolls," respectively. The application was filed on the basis of intent-to-use and is being published as an intent-to-use application.

7. With the exception of "Dolls," the goods recited in application Serial No. 77738941 are identical to goods used and registered by Opposer.

8. Applicant's goods recited in U.S. application Serial No. 77738941 are the same type of products as those of Opposer.

9. Upon information and belief, and given that the three products specified by applicant in its application, it is clear that applicant intends to use its proposed mark for products which are directed primarily to women.

10. By virtue of Opposer's registrations of its TIBI mark with priority dates long prior to the filing date of Applicant's application, Opposer has priority over Applicant's intent-to-use filing date of May 17, 2009 for the within Application.

11. The marks TIBI and GIBY are nearly identical in sound, meaning and appearance. They are each four characters long, the middle 2 characters are identical, the last characters “I” and “Y” are pronounced the same, and the first letters of each are “hard” sounding and spoken consonants. The mere addition of periods does not alter the way the mark is presented, nor does it alter the way the mark would be spoken. The overall commercial impression conveyed by the proposed mark in U.S. application Serial No. 77738941 is sufficiently similar to TIBI, that confusion is likely.

12. There is a strong likelihood of confusion in the present circumstances for the reasons set forth herein. The marks are similar in sound, meaning and appearance, and Applicant’s goods are nearly fully encompassed by those goods used and registered by Opposer.

13. The Application opposed herein was published for opposition on September 22, 2009. Accordingly, this Notice of Opposition is timely.

14. Based upon the above, there is a likelihood of confusion between Opposer’s marks and Applicant’s mark. Should Applicant be permitted to register its mark, it will interfere with Opposer’s registered marks, Opposer’s present business in its products, as well as Opposer’s planned natural business extensions of its product line. Opposer will be damaged by the use and registration of the mark opposed herein.

WHEREFORE, Opposer respectfully requests, pursuant to 37 C.F.R. § 2.101(b) and 15 U.S.C. § 1052(d), that the mark G.I.B.Y, application Serial No. 77738941, be denied registration on the grounds of confusingly similarity with Opposer’s marks as pleaded herein.



Opposer's counsel hereby authorizes all communications concerning this  
Opposition to be made electronically to [usptomail@webtm.com](mailto:usptomail@webtm.com).

Dated: October 22, 2009

Respectfully submitted:  
GORDON E. R. TROY, PC  
/s/ Gordon E. R. Troy, Esq.

By: \_\_\_\_\_  
Gordon E. R. Troy  
*Attorney for Opposer*  
PO Box 368  
Charlotte, VT 05445  
(802) 425-9060 Phone  
(802) 425-9061 Fax  
[gtroy@webtm.com](mailto:gtroy@webtm.com) Direct Email  
[usptomail@webtm.com](mailto:usptomail@webtm.com) Service Email

**Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing has been served  
on counsel for Applicant by depositing same with the United States Postal Service  
with sufficient postage as first-class mail in an envelope addressed to:

Josh Gerben, Esq.  
Gerben Law Firm, PLLC  
1615 L Street NW, Suite 1350  
Washington, DC 20036-5668

on: October 22, 2009

Respectfully submitted:  
GORDON E. R. TROY, PC  
/s/ Gordon E. R. Troy, Esq.

By: \_\_\_\_\_  
Gordon E. R. Troy  
*Attorney for Opposer*